PUSHPAH A/P M.S.S. RAJOO

v.

THE MALAYSIAN CO-OPERATIVE INSURANCE SOCIETY LIMITED & ANOR.

HIGH COURT, SHAH ALAM
DATO' K.C. VOHRAH J
[ORIGINATING SUMMONS NO. 24-352 OF 1993]
10 JULY 1995

CO-OPERATIVE SOCIETIES*: Society issuing life insurance policy to member - Death of member - Rightful beneficiary - Deceased member nominated father as sole beneficiary - Deceased's subsequent marriage to plaintiff - Effect - Whether nomination automatically revoked upon marriage - Applicable law - Whether there was a lacuna - English common law and rules of equity - Whether to be applied - Co-operative Societies Act 1948 s. 17 - Co-operative Societies Rules 1949 r. 18 - Civil Law Act 1956 s. 3(1)(a) - (U.K) Friendly Societies Act 1974 s. 66(7).*

INSURANCE LAW: *Life insurance policy - Co-operative society issuing life insurance policy to member - Death of member - Rightful beneficiary - Deceased member nominated father as sole beneficiary - Deceased's subsequent marriage - Effect - Whether nomination automatically revoked upon marriage - Whether widow entitled to benefits of policy.*

In 1986 one Ravithiran (the deceased) took out a life insurance policy from the first defendant and named his father, the second defendant, as beneficiary of the policy in the event of his death. Three years later the deceased married the plaintiff. The deceased had not revoked or varied the nomination after his marriage, and hence, at the time of his death in 1992, the second defendant remained the sole nominee of the said policy.

The plaintiff applied for a declaration that she was the rightful beneficiary of the said policy notwithstanding that she was not so nominated. The plaintiff contended that her marriage to the deceased had effectually revoked the second defendant's nomination, with the result that the said nomination became void in law. Counsel for the plaintiff argued that there was a *lacuna* in the Malaysian law in this respect, in that, unlike the English legislation, there was no provision for the automatic revocation of a nomination when a nominator marries. In the event Counsel urged the Court to adopt and apply the English Friendly Societies Act 1974, in particular s. 66(7) thereof, which provided for such revocation. According to Counsel s. 3 of the Civil Law Act 1956 enabled the Court to adopt the said English legislative provision.

Before the learned Judge the sole issue that arose was whether under the relevant laws the marriage of the deceased to the plaintiff revoked the nomination made by the deceased in favour of his father.

Held:

[1] It is clear that at the time of the death of the plaintiff's husband, who was a member of the first defendant society, there was written law dealing with the nomination of a person by a member of a co-operative society to receive the member's share or interest with the society on the member's death, as evidenced by r. 18 of the Co-operative Societies Rules 1949. Likewise there was written law dealing with the transfer of such share or interest by the Board of the society on the death of the member, as is explicit in s. 17

of the Co-operative Societies Act 1948. Provisions having been made by written law, there is no question of applying English common law or the rules of equity in respect of the subject matter.

[2] There is no ambiguity in the language of s. 17 of the Co-operative Societies Act 1948, the governing provision applicable to the present case. Since the deceased member had nominated the second defendant in accordance with rule 18 of the Co-operative Societies Rules 1949, and did not vary or revoke the nomination before his death, the first defendant has no discretion but to transfer the "share or subscription or interest of the deceased member" to the nominee, the second defendant. Thus the law as it stands is not in the plaintiff's favour.

Per curiam:

The Court is aware that as the law stands the spouse and children in cases such as this may be unjustly deprived of a member's share or interest in property with the society on the death of the member. It is however for Parliament to change the law if Parliament deems the circumstances justify such change.

[Application dismissed].

Legislation referred to:
Societies Act, 1948 (Act 287), s. 17
Societies Act 1993 (Act 502), s. 24
Friendly Societies Act 1974 (U.K), s. 66
Civil Law Act 1956 (Act 67), s. 3

For the plaintiff - Dennis Appadurai, (Gurmit Singh with him); M/s. Sidek, Teoh Wong & Dennis
For the first defendant - B. Balakumar; M/s. Azim, Ong & Krishnan
For the second defendant - K. Pushpalingam; M/s. Pushpalingam S.Y. Yoong & Assoc.

JUDGMENT

K.C. Vohrah J:

Ravithiran a/l Suppiah @ Kalisamy (the deceased) took out a policy of insurance on his life from the Malaysian Co-operative Insurance Society Ltd (the first defendant) in 1986. He was a bachelor then and on 31 March 1986 he nominated his father (the second) to be the sole beneficiary of the proceeds under the policy in the event of his death. About 3 years later on 18 March 1989 the deceased married the plaintiff. The deceased did not revoke or vary the nomination made by him of his father as the sole beneficiary of the proceeds. On 25 September 1992 the deceased died as a result of motor accident.

The widow of the deceased has applied to the Court for a declaration that the nomination made by the deceased in favour of his father (the second defendant) is void and for an order that the proceeds of the said policy of insurance taken out by her late husband be paid to her and that the costs of the application be paid by the second defendant.

The sole issue is whether the marriage of the deceased to the plaintiff revoked the nomination made by the deceased in favour of his father under the relevant laws.

The first defendant is a co-operative society which was registered under the Co-operative Societies Act, 1948 (Act 287) and is now deemed to be registered under Co-operative Societies Act 1993 (Act 502) which came into force on 22 January 1994. The first defendant undertakes insurance business and its insurance business is governed by the Insurance Act 1963.

The deceased was a member of the first defendant, a registered society. When he nominated his father (the second defendant) to be the sole beneficiary of the proceeds under the policy in the event of his death he did so under by virtue of rule 18 of the Co-operative Societies Rules, 1949 which reads:

> 18(1) Any member of a registered society may in writing... nominate any person or persons to whom his share or interest of the value of such share or interest and all other monies referred to in s. 17 of the Ordinance that may be due to him may, on the death of such member, be paid or transferred under the provision of the said section, and may in similar manner from time to time revoke or vary such nomination...

The s. 17 referred to in the rule is a reference to s. 17 of the repealed Act, Act 287. The equivalent provision, s. 24 in the extant Act (Act 502), in so far as it relates to a deceased member who is not a Muslim is substantially similar to s. 17 of the repealed Act save that the subscription of a deceased member mentioned in the said 17 is not referred to in the present provision. For our purposes, however, s. 17 of the repealed Act is the relevant provision as it relates to rights which accrued on the death of a member while Act 287 was the governing law. In our case the member died in September 1992 while Act 502 which repealed Act 287 came into force only on 22 January 1994.

Section 17 of Act 287 reads:

> 17(1) On the death of a member, a registered society may transfer the share or subscription or interest of the deceased member to the person nominated in accordance with the rules made in this behalf, or, if there is no person so nominated, to such person as may appear to the Board to be the heir or legal representative of the deceased member, or may pay to such nominee, heir or legal representative, as the case may be, a sum representing the value of such member's share or subscription or interest, as ascertained in accordance with the rules or by-laws..

Encik Dennis Appadurai for the plaintiff argues that it is not necessary for the first defendant to pay out the proceeds to the person nominated by the deceased as the word is not "shall" but "may" and the word "may" implies that the Board (the governing body of the first defendant) need not pay to the person nominated and may take into account that the deceased had married since the date of nomination and that the marriage operated to revoke the nomination. He relies on subsection (7) of s. 66 of the English Friendly Societies Act 1974 which is reproduced below together, for completeness, with subsections (1) and (6) of s. 66:

> 66.(1)Subject to the following provisions of this section, a member of a registered society or of a branch thereof who is not under the age of sixteen years may, by writing... nominate a person or persons to whom any sum of money payable by the society or branch on the death of that member or any specified amount of money so payable shall be paid at his decease.
>
> (2) ...
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> ...
>
> (6) A nomination so made may be revoked or varied by any similar document under the hand of the nominator so delivered, sent or made as mentioned in subsection (1) above.
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> (7) The marriage of a member of the society or branch shall operate as a revocation of any nomination previously made by that member under this section.

What is to be noted is that subsections (1) and (6) of the English Act are substantially similar to s. 17 of our Act 287. However, Encik Appadurai seems to think that there is a *lacuna* in the Malaysian law in that the Malaysian legislation has not provided for the automatic revocation of a nomination when the nominator marries unlike the s. 66(7) of the English legislation and he adverts to s. 3 of the Civil Law Act 1956 (Act 67) to say that the English legislative provision i.e. s. 66(7) of the friendly societies Act 1974, should be adopted.

Let me turn to s. 3(1) of the Civil Law Act 1956. It reads as follows:

> 3(1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall:
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> (a) in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on 7 April 1956.
>
> (b) in Sabah, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 1 December 1951;
>
> (c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 12 December 1949, subject however to subsection (3) (ii):
>
> Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

It will be noticed that the provision that has to be considered is s. 3(1)(a) which relates only to West Malaysia as the 1948 legislation relating to Co-operative Societies Act, 1948 (Act 287) is one "which applies to West Malaysia only" (see s. 1(2)) of the Act). What that means is that I have to consider the applicability of the "common law of English and the rules of equity" and not the additional item "statutes of general application" (which is included for Sabah and Sarawak). Having said that, it is quite clear, however, that at the time of the death of the plaintiff's husband who was a member of the society to receive the member's share or interest with the society on the member's death (rule 18 of the Co-operative Societies Rules, 1949) as there was written law dealing with the transfer of such share or interest by the Board of the society on the death of the member to either the nominated person, heir or legal representative of the deceased member (s. 17 of Act 287). Provision having been made by written law, there is no question of applying English common law or the rules of equity in respect of the subject matter and in any event the provision sought to be brought in is a statutory provision.

I cannot see any ambiguity in the language of s. 17 of Act 287. Since the deceased member had nominated the second defendant in accordance with rule 18 of the Co-operative Societies Rules, 1949 and he did not vary or revoke the nomination before his death the co-operative society, the 1st defendant, has no discretion but to transfer the "share or subscription of interest of the deceased member" to the nominee, the second defendant.

The Court is aware that as the law stands (whether under s. 17 of Act 287 or s. 24 of Act 502, as the case may be) the spouse and children of a deceased member may be unjustly deprived of a member's share or interest in property with the society on the death of the member because the member after marriage, either forgot to include or re-nominate

or procrastinated in re-nominating or including the spouse or children to take the share or interest or the member otherwise failed to revoke the nomination made before marriage. It is, however, for Parliament to change the law if Parliament deems the circumstances justify such change. As the law stands I have to agree with all Counsel for the defendants that the law is not in the plaintiff's favour. The application is dismissed with costs.